

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

JAMES ALBERT DUKE, #1188448

§

VS.

§

CIVIL ACTION NO. 9:07cv10

DIRECTOR, TDCJ-CID

§

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge Judith K. Guthrie. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition of this case.

Petitioner filed objections to the Report. Petitioner reasserts his contentions and correctly points out that the state habeas court made a fact finding that in the plea agreement, the State "agreed to make no recommendation as to punishment." *State Court Records* WR-37,214-02, at 50. Nonetheless, the state habeas court also made a fact finding that "Applicant fails to prove that the State violated the terms of the plea agreement." *State Court Records* WR-37,214-02, at 51.

Petitioner's argument still revolves around the issue of whether "make no recommendation" is the equivalent of "remain silent," or "not argue." Petitioner still points out no record evidence that he believed that the State would, in its statements to the jury, remain silent on or not argue the issue of punishment.

This Court has made a *de novo* review of Petitioner's objections and determined that they lack merit. This Court finds that the Magistrate Judge's findings and conclusions are correct, and adopts them as the Court's findings and conclusions. The Court therefore

**ORDERS, ADJUDGES, and DECREES** that this action is **DISMISSED WITH PREJUDICE**;

**ORDERS** that Petitioner is **DENIED** a certificate of appealability; and

**ORDERS** that all motions not previously ruled on are denied.

So **ORDERED** and **SIGNED** this **6** day of **December, 2007**.

A handwritten signature in cursive script, appearing to read "Ron Clark", is positioned above a horizontal line.

Ron Clark, United States District Judge